

# XV. Processing Form I-131, Application for Travel Document



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## Module Objectives

The objective of this section is to provide a basic understanding of:

- The advance parole requirements for individuals whose removal has been deferred under DACA:
- How to apply these requirements; and
- The advance parole processing and validity periods.



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## Advance Parole

Parole is the authorization to allow an otherwise inadmissible person to physically proceed into the United States under certain safeguards and controls. Parole is not an admission.

Parole is granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Advance parole is generally granted prior to the individual's departure from the United States to authorize that person's temporary parole upon his/her return to the United States following a brief absence.

The legal authority for parole is found in INA 212(d)(5)(A).



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## Advance Parole (Continued)

In accordance with the discretionary authority provided in INA 212(d)(5)(A), grants of advance parole to DACA recipients may be made based on the need to travel abroad for educational, employment, or humanitarian purposes.

- These categories are to be construed broadly, but must be supported with evidence demonstrating the need to travel.



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## Advance Parole - DACA Recipients

A DACA requestor may not concurrently file Form I-131 for advance parole with his/her DACA request.

A DACA recipient may file an advance parole request with a copy of the I-797 notice deferring removal under DACA.



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## Advance Parole Requested for Educational Purposes

If the DACA recipient is requesting advance parole to travel for educational purposes, the individual must show that the travel will be undertaken for educational pursuits.

Examples include:

- Semester abroad programs; or
- Travel necessary to conduct academic research.



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## Advance Parole – Expedite Requests

As a general matter, expedite requests will not be granted.

However, in a dire emergency, and if properly documented and verified, if an individual were to appear at a local office, the local office has the option of processing the advance parole or working through established POCs at the Service Center under normal protocols.



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## Impact of Travel Without Advance Parole

Deferred Action is terminated automatically if an individual travels outside the United States without advance parole after removal has been deferred under DACA.



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## Advance Parole for DACA Recipients in Removal Proceedings

Individuals in removal proceedings, including those with final removal orders, may seek advance parole if the request meets the guidelines for advance parole consideration under DACA.

A departure made while under a final order of removal (including a voluntary departure order that converted automatically to a final removal order) renders that individual inadmissible under INA 212(a)(9)(A).



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# Deferred Action for Childhood Arrivals -SRMT Guidance-

SCOPS-HQ, August 2012



# Objectives

At the end of this workshop, officers will learn how to respond to DACA-related requests through the Service Request Management Tool (SRMT) process. Officers will:

- Understand what DACA is;
- Understand the basic authority for deferred action in general;
- Understand the Secretary's specific guidelines for DACA;
- Learn how to respond to a DACA-related SRMT while a DACA request is still pending;
- Learn how to respond to a request to review a denied DACA request; and
- Learn how to resolve potential inconsistencies.



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## Key Resources

Officers will have a number of key resources at their disposal. These include:

- The Secretary's memorandum and related FAQs;
- The national DACA SOP;
- The AFM; and
- USCIS systems.



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# I. DACA Overview

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## Module Objectives

The objective of this section is to provide a basic understanding of:

- The authority for exercising prosecutorial discretion;
- The authority and intent behind DACA;
- DACA terms; and
- DACA challenges.



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## Authority for Deferred Action

Under INA 103, the Secretary has the authority to administer the immigration laws.

- Includes the authority for the Secretary to exercise her discretion in deciding when and how to remove individuals from the United States.

There are no specific deferred action provisions in the statute or the regulations.

- Deferred action is not a benefit and does not confer any status.
- Deferred action does not lead to any status.
- Deferred action simply means that action to remove someone is deferred until a certain date and that the decision to pursue removal may be revisited at some point in the future.



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# Authority and Intent for DACA

## DACA is Delayed Action for Childhood Arrivals

On June 15, 2012, the Secretary issued a memo to CBP, USCIS, and ICE, describing the guidelines for exercising prosecutorial discretion in cases involving certain young people who arrived in the United States as children.

The intent behind the Secretary's memorandum is to prioritize resources on high priority removal cases.

There is a basic recognition that individuals brought to the United States as young children lacked the intent to violate the law.



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## DACA Terms

Since deferred action is not a benefit, different terms are used for DACA.

Instead of:

- *Application*, use request.
- *Applicant*, use requestor (or DACA requestor).
- *Approve or grant*, use defer removal, defer action under **DACA**, etc.
- *Must, should, or shall*, use is to be.



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## DACA Implementation

Deferred action requests under standard protocols (i.e., non-DACA) do not require a form or fee.

For DACA, USCIS:

- Is conducting extensive stakeholder outreach;
- Has created a DACA video, a DACA website, and has published a series of FAQs; and
- Created a new Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*.



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## DACA Implementation (Continued)

Form I-821D allows USCIS to:

- Collect the information and documents needed to determine whether the Secretary's DACA guidelines have been met;
- Track the intake and workflow of DACA requests;
- Perform background and security checks on DACA requests;
- Request additional information when needed;
- Enter the adjudicative actions in the system;
- Track the status of the DACA request and respond to customer inquiries;
- Track statistics; and
- Position the Agency for potential renewal in 2 years.



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## DACA Implementation (Continued)

The Secretary's memorandum allows DACA requestors to obtain work authorization based on economic necessity.

- Existing regulations are at 8 CFR 274a.12(c)(14) – based on a grant of deferred action.
- The (c)(33) code will be used to distinguish DACA-related EADs.

DACA requestors are required to concurrently file Form I-765, Application for Employment Authorization, with the new I-765WS, together with their Form I-821D. This allows USCIS to:

- Streamline the process by adjudicating the EAD request concurrently with the DACA request; and
- Collect biometrics at Application Support Centers (ASCs).

The Lockbox will reject Form I-821D if it is not filed concurrently with Form I-765.



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## DACA Challenges

- Since deferred action is not a benefit, it does not fit squarely within the regulations.
  - This makes DACA requests different from benefit applications that officers are accustomed to adjudicating.
- Although the regulations are useful resources, the guiding principles derive from the overarching discretionary authority to defer someone's removal and the Secretary's DACA guidelines.



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## DACA Challenges (Continued)

DACA requestors arrived in the United States as children.

- Depending on their age, they may or may not have documentation of their own.
- Officers may see documents from the DACA requestor's parents, for example, rent receipts or utility bills.
- One piece of evidence might satisfy more than one guideline. For example, school transcripts can also show residence, age, and arrival before age 16.
- Because some DACA requestors may have been working under assumed names, name discrepancies, standing alone, will not necessarily be a fraud indicator.
- Officers will be looking at the documents in their totality to see how they add up, and, if necessary, will issue an RFE to resolve discrepancies.
- Cases could be referred to the CFDO for further research if the discrepancies have not been resolved.



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## II. Required Forms and Fees



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## Module Objective

The objective of this section is to provide a basic understanding of:

- The Forms required to file a DACA request.



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# The DACA Request

## Each DACA request must include:

- Form I-821D, *Consideration of Deferred Action for Childhood Arrivals*;
  - There is no fee for Form I-821D.
- Form I-765, *Application for Employment Authorization* with I-765 WS;
- Basic I-765 filing fee and the biometrics services fee; and
  - Total fee of \$465 (or proof of fee exemption approval).
  - Fee exemption will appear as fee waived in C3.
- Documentary evidence to meet the DACA guidelines.



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